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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2009-326

13 **ARMAND VALENZUELA ESCANILLA**

2336 N. Main Street

Apt. B

14 Salinas, CA 93906

2217 Driftwood Park Drive

Modesto, CA 95355

15 Registered Nurse License No. 647709

ACCUSATION

16 Respondent.

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19 Complainant alleges:

20 **PARTIES**

21 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation solely in her
22 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
23 Consumer Affairs.

24 2. On or about November 9, 2004, the Board of Registered Nursing issued Registered
25 Nurse License Number 647709 to Armand Valenzuela Escanilla (Respondent). The Registered
26 Nurse License was in full force and effect at all times relevant to the charges brought herein and
27 will expire on January 31, 2010, unless renewed.
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2 JURISDICTION

3 3. This Accusation is brought before the Board of Registered Nursing (Board),
4 Department of Consumer Affairs, under the authority of the following laws. All section
5 references are to the Business and Professions Code unless otherwise indicated.

6 STATUTORY PROVISIONS

7 4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part,
8 that the Board may discipline any licensee, including a licensee holding a temporary or an
9 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
10 Nursing Practice Act.

11 5. Section 2761 of the Code states, in pertinent part:

12 "The board may take disciplinary action against a certified or licensed nurse or deny an
13 application for a certificate or license for any of the following:

14 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

15 ...

16 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
17 violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice
18 Act] or regulations adopted pursuant to it."

19 ...

20 6. Section 726 of the Code states:

21 "The commission of any act of sexual abuse, misconduct, or relations with a patient, client,
22 or customer constitutes unprofessional conduct and grounds for disciplinary action for any
23 person licensed under this division, under any initiative act referred to in this division and under
24 Chapter 17 (commencing with Section 9000) of Division 3.

25 "This section shall not apply to sexual contact between a physician and surgeon and his or
26 her spouse or person in an equivalent domestic relationship when that physician and surgeon
27 provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person
28 in an equivalent domestic relationship."

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1 “(f) As used in subdivisions (a), (b), (c), and (d), “touches” means physical contact with the
2 skin of another person whether accomplished directly or through the clothing of the person
3 committing the offense.

4 “(g) As used in this section, the following terms have the following meanings:

5 “(1) “Intimate part” means the sexual organ, anus, groin, or buttocks of any person, and the
6 breast of a female.

7 “(2) “Sexual battery” does not include the crimes defined in Section 261 or 289.

8 “(3) “Seriously disabled” means a person with severe physical or sensory disabilities.

9 “(4) “Medically incapacitated” means a person who is incapacitated as a result of
10 prescribed sedatives, anesthesia, or other medication.

11 “(5) “Institutionalized” means a person who is located voluntarily or involuntarily in a
12 hospital, medical treatment facility, nursing home, acute care facility, or mental hospital.

13 “(6) “Minor” means a person under 18 years of age.

14 “(h) This section shall not be construed to limit or prevent prosecution under any other law
15 which also proscribes a course of conduct that also is proscribed by this section.

16 “(i) In the case of a felony conviction for a violation of this section, the fact that the
17 defendant was an employer and the victim was an employee of the defendant shall be a factor in
18 aggravation in sentencing.

19 “(j) A person who commits a violation of subdivision (a), (b), (c), or (d) against a minor
20 when the person has a prior felony conviction for a violation of this section shall be guilty of a
21 felony, punishable by imprisonment in the state prison for two, three, or four years and a fine not
22 exceeding ten thousand dollars (\$10,000).”

23 8. Penal Code Section 653m provides, in pertinent part:

24 “(a) Every person who, with intent to annoy, telephones or makes contact by means of an
25 electronic communication device with another and addresses to or about the other person any
26 obscene language or addresses to the other person any threat to inflict injury to the person or
27 property of the person addressed or any member of his or her family, is guilty of a misdemeanor.
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1 Nothing in this subdivision shall apply to telephone calls or electronic contacts made in good
2 faith.

3 “(b) Every person who, with intent to annoy or harass, makes repeated telephone calls or
4 makes repeated contact by means of an electronic communication device, or makes any
5 combination of calls or contact, to another person is, whether or not conversation ensues from
6 making the telephone call or contact by means of an electronic communication device, guilty of a
7 misdemeanor. Nothing in this subdivision shall apply to telephone calls or electronic contacts
8 made in good faith or during the ordinary course and scope of business.”

9
10 9. Penal Code section 242 provides:

11 “Battery defined. A battery is any willful and unlawful use of force or violence upon the
12 person of another.”

13 10. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
14 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
15 licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the
16 Code, the Board may renew an expired license at any time within eight years after the expiration.

17 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
18 administrative law judge to direct a licentiate found to have committed a violation or violations of
19 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
20 enforcement of the case.

21 FACTUAL BACKGROUND

22 12. On or about August 26, 2006, Respondent was working as a registered nurse at
23 Salinas Valley Memorial Hospital in Salinas, California. Patient C.D., a 49 year old male, was
24 seen in the Emergency Department at Salinas Valley Memorial Hospital for severe nausea and
25 dizziness. C.D. was admitted to the hospital for observation because he was not rousable due to
26 administration of sedatives and other medication. While caring for patient C.D. early in the
27 morning of August 26, 2006, and while C.D. was semi-conscious, Respondent masturbated C.D.,
28 and placed a gloved finger inside C.D.’s anus.

13. On or about December 6, 2007, Respondent was on duty in the Salinas Valley Memorial Hospital Emergency Room. Respondent was assigned to care for patient D.D., a 19 year old suffering from severe insomnia and anxiety. Respondent told D.D. that he needed a massage so he could sleep better, and that he would give D.D. a massage. Respondent asked D.D. if he had a girlfriend, or if he liked girls. Respondent placed his stethoscope on D.D.'s chest in an apparent attempt to listen to D.D.'s heart, but then Respondent moved the stethoscope down to D.D.'s belly, and then to his groin area. Respondent also felt D.D.'s thighs. Respondent asked D.D. for his telephone number and personal information (after it had already been given to the intake receptionist). When D.D. arrived home, he received several sexually suggestive text messages, including a message indicating that the sender of the text message would like to engage in oral sex with D.D.

FIRST CAUSE FOR DISCIPLINE

(SEXUAL MISCONDUCT)

14. Respondent is subject to disciplinary action under sections 2761(a), 2761(d), and 726 and/or Penal Code section 243.4, in that he committed sexual misconduct/abuse with patient C.D., as alleged above in paragraph 12.

15. Respondent is further subject to disciplinary action under sections 2761(a), 2761(d), and/or 726 in that he committed sexual misconduct/abuse with patient D.D., as alleged above in paragraph 13.

SECOND CAUSE FOR DISCIPLINE

(BATTERY)

16. Respondent is subject to disciplinary action under sections 2761(a), 2761(d), and/or Penal Code section 242, in that he committed a battery upon patient C.D., as alleged above in paragraph 12.

17. Respondent is further subject to disciplinary action under sections 2761(a), 2761(d), and/or Penal Code section 242, in that he committed a battery upon patient D.D., as alleged above in paragraph 13.

1 THIRD CAUSE FOR DISCIPLINE

2 (ELECTRONIC COMMUNICATION WITH INTENT TO ANNOY)

3 18. Respondent is subject to disciplinary action under sections 2761(a), and/or 2761(d),
4 and/or Penal Code section 653m, in that he made contact by means of an electronic
5 communication device with D.D. with intent to annoy, and transmitted obscene language, as
6 alleged above in paragraph 13.

7 FOURTH CAUSE FOR DISCIPLINE

8 (UNPROFESSIONAL CONDUCT)

9 19. Respondent is subject to disciplinary action under sections 2761(a), and/or 2761(d),
10 in that he committed unprofessional conduct with patient C.D., as alleged above in paragraph 12.

11 20. Respondent is further subject to disciplinary action under sections 2761(a), and/or
12 2761(d), in that he committed unprofessional conduct with patient D.D., as alleged above in
13 paragraph 13.

14 PRAYER

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
16 and that following the hearing, the Board of Registered Nursing issue a decision:

17 1. Revoking or suspending Registered Nurse License Number 647709, issued to
18 Armand Valenzuela Escanilla.

19 2. Ordering Armand Valenzuela Escanilla to pay the Board of Registered Nursing the
20 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
21 Professions Code section 125.3;

22 3. Taking such other and further action as deemed necessary and proper.

23
24 DATED: 6/29/09

for *Stacie Benume*
RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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